

**ORDINANCE NUMBER 11-05**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, ADOPTING "CITY OF MARICOPA ZONING CODE AMENDMENTS FOR MEDICAL MARIJUANA" BY REFERENCE WHICH AMENDS THE DEFINITIONS IN ARTICLE 4, SECTION 1601 OF ARTICLE 16 AND SECTION 1801 OF ARTICLE 18 OF THE MARICOPA CITY ZONING CODE AND PROVIDING FOR SEVERABILITY AND DECLARING AN EMERGENCY.**

**WHEREAS**, that certain document known as the "City of Maricopa Zoning Code Amendments for Medical Marijuana" was adopted as a public record by Resolution No. 11-05 on April 5, 2011; and

**WHEREAS**, on November 29, 2010, the Arizona Secretary of State certified the election results of the November General Election during which Proposition 203 entitled "The Arizona Medical Marijuana Act" was passed by the voters of Arizona; and

**WHEREAS**, the Arizona Medical Marijuana Act allows qualifying patients with a debilitating medical condition to obtain marijuana from a dispensary for use in treating or alleviating the debilitating medical condition; and

**WHEREAS**, the Arizona Medical Marijuana Act allows cities to enact zoning regulations that limit the use of land for medical marijuana dispensaries; and

**WHEREAS**, the possession, delivery, manufacture, cultivation, and sale of marijuana is currently illegal under the both the federal Controlled Substances Act and the Arizona Controlled Substances Act; and

**WHEREAS**, nothing in this Ordinance is intended, nor shall be construed, to assist, permit, or condone any violation of federal or state law; and

**WHEREAS**, the Mayor and City Council of the City of Maricopa find the zoning restrictions in this Ordinance strike the appropriate balance between the intent of the Arizona Medical Marijuana Act and the mitigation of the negative secondary impacts that are associated with medical marijuana dispensaries and cultivation locations; and

**WHEREAS**, the Mayor and City Council of the City of Maricopa further finds that the zoning regulations adopted by this Ordinance are in the best interests of the City of Maricopa and the health, safety, and welfare of its citizens.

**WHEREAS**, A.R.S. §9-802 allows a City to adopt a public record by Ordinance as a means to reduce publication costs while ensuring that the public gets fair notice and opportunity to review its operative provisions;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, AS FOLLOWS:**

**SECTION 1.** Pursuant to Arizona Revised Statutes Section 9-802, that certain document known as "City of Maricopa Zoning Code Amendments for Medical Marijuana," three copies of which are on file in the office of the City Clerk of the City of Maricopa, Arizona, which document was made a public record by Resolution No. 11-05 of the City of Maricopa, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

**SECTION 2.** Article 4 of the Maricopa City Zoning Code and all amendments thereto are hereby revised by adding the definitions of Medical Marijuana, Medical Marijuana Cultivation, Medical Marijuana Infusion (or Manufacturing) Facility, Medical Marijuana Dispensary, Allowable Amount of Marijuana, Enclosed, Locked Facility, Cardholder and Medical Marijuana Qualifying Patient as set forth in "City of Maricopa Zoning Code Amendments for Medical Marijuana" which was made public record by Resolution No. 11-05 of the City of Maricopa, Arizona.

**SECTION 3.** Section 433 of Article 4 regarding the definition of Home Occupation of the Maricopa City Zoning Code and all amendments thereto are hereby repealed in their entirety and replaced with the language set forth in "City of Maricopa Zoning Code Amendments for Medical Marijuana" which was made public record by Resolution No. 11-05 of the City of Maricopa, Arizona.

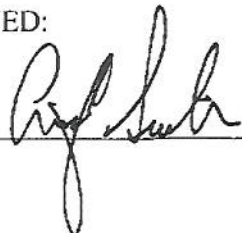
**SECTION 4.** Section 1601 regarding Uses Permitted in the General Business Zone and Section 1801 regarding Uses Permitted in the Industrial Zone of the Maricopa City Zoning Code and all amendments thereto are hereby revised by adding the provisions set forth in "City of Maricopa Zoning Code Amendments for Medical Marijuana" which was made public record by Resolution No. 11-05 of the City of Maricopa, Arizona.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**SECTION 6.** The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist and this Ordinance shall become immediately effective upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Council of the City of Maricopa, Arizona, this 5<sup>th</sup> day of April, 2011.

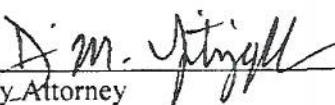
APPROVED:

  
\_\_\_\_\_  
Mayor

ATTEST:



APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney



## **CITY OF MARICOPA ZONING ORDINANCE AMENDMENTS- TXT10-04 MEDICAL MARIJUANA ORDINANCE**

The following are the proposed amendments to the City of Maricopa Zoning Ordinance relating to medical marijuana dispensary and medical marijuana cultivation through addition of new text(s) and, or deletion as applicable:

### **Purpose**

It is the purpose and intent of this article to preserve the welfare of current and future City residents and to facilitate growth in an orderly manner, relating to "medical marijuana dispensary" and "medical marijuana off site cultivation location" and in order to ensure the health, safety, and welfare of the residents of the City of Maricopa. The regulations in this article, in compliance with the Arizona Medical Marijuana Act, (ARS) § Title 36, Chapter 28.1; as approved by the voters, do not interfere with a patient's right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana. Medical marijuana dispensaries shall comply with all provisions of the City of Maricopa Municipal Code ("Code"), Zoning Ordinance, State Law, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under state or local law.

### **Applicability**

Medical Marijuana Dispensary, Medical Marijuana Cultivation and, or Medical Marijuana Infusion (or Manufacturing) Facility:

Amendments to the City of Maricopa Zoning Ordinance **Article 4, Definitions Section ; AND Article 16, CB-2 General Business Zone, Section 1601 Uses Permitted; AND Article 18, CI-2 Industrial Zone, Section 1701 Uses Permitted.**

The use would require a Conditional Use Permit (CUP). A Conditional Use Permit (CUP) application is required to be reviewed and approved through the City of Maricopa Planning and Zoning Commission and the City Council. The CUP approval shall be consistent with permitted rules and regulations approved by the Arizona Department of Health Services (DHS). Locations will be limited to the two zoning districts: CB-2 General Business Zone and CI-2 Industrial Zone classifications. The use would be prohibited in all other zoning districts. Operating hours are proposed to be consistent with typical retail business hours where the business is located, and it will also require obtaining a City Business License.

### **Zoning Ordinance Article 4: Definitions**

Amend **Article 4, Definition Section** by **adding** the following definitions:

**Medical Marijuana:** Means of all parts of the genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying

patients debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

**Medical Marijuana Cultivation:** The process by which a person grows a marijuana plant. A facility shall mean a building, structure, or premises used for the cultivation or storage of medical marijuana that is physically separate and off-site from a medical marijuana dispensary.

**Medical Marijuana Infusion (or Manufacturing) Facility:** A facility that incorporates medical marijuana (cannabis) by the means of cooking, blending, or incorporation into consumable/edible goods.

**Medical Marijuana Dispensary:** A non-profit entity defined in A.R.S. § 36-2801(11), that acquires, possesses, sells, distributes, transmits, gives, dispenses, or otherwise provide medical marijuana to qualifying patients.

**Allowable Amount of Marijuana:** A qualifying patient may have 2 1/2 ounces of usable marijuana; and if the patient is authorized to cultivate marijuana, the patient may grow up to 12 marijuana plants contained in an enclosed locked facility A.R.S. §36-2801(1).

**Enclosed, Locked Facility:** A closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder A.R.S. §36-2801(6).

**Cardholder:** Means a qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card as defined in A.R.S. § 36-2801.2

**Medical Marijuana Qualifying Patient:** A person who has been diagnosed by a physician as having a debilitating medical condition as defined in A.R.S. § 36-2801.13.

**Place of Worship:** A permanently located building where persons regularly assemble for religious worship and which is maintained and controlled by a religious body to sustain public worship and church-related uses.

Amend **Article 4, Definition Section 433: Home Occupation** by deleting old definition and adding a new definition:

Old Definition

~~**Sec. 433 — HOME OCCUPATION:** An activity carried on by the occupant of a dwelling as a secondary use, including professional and semi-professional offices, when conducted and entered from within the dwelling, in connection with which there is no public display of stock in trade upon the premises, not more than one non-resident of the premises is employed and not more than one-fourth of the floor area of one story of the main building or a detached home workshop of not more than 200 square feet in area is used for such home occupation; and provided that the residential character of the dwelling is not changed by the use and that such occupation does not cause any sustained or unpleasant or unusual noises or vibrations, or noxious fumes or odors, or cause any parking or traffic congestion in the immediate neighborhood.~~



## New Definition

**Sec. 433 HOME OCCUPATION:** An activity carried on by the occupant of a dwelling as a secondary use, including professional and semi-professional offices, when conducted and entered from within the dwelling, in connection with which there is no public display of stock-in-trade upon the premises, not more than one non-resident of the premises is employed and not more than one-fourth of the floor area of one story of the main building or a detached home workshop of not more than 200 square feet in area is used for such home occupation; and provided that the residential character of the dwelling is not changed by the use and that such occupation does not cause any sustained or unpleasant or unusual noises or vibrations, or noxious fumes or odors, or cause any parking or traffic congestion in the immediate neighborhood. ***Medical marijuana dispensaries, or cultivation, or marijuana infusion is prohibited under the home occupation. In addition, the following guidelines must be adhered to:***

- 1. A home occupation must be conducted by persons who reside in the dwelling unit. No person who does not reside on the premises shall engage in the business and be located on the premises.***
- 2. A home occupation shall be required to have a valid City Business License and renewed each year thereafter as long as the business is conducted at the premise.***
- 3. No toxic, explosive, flammable, combustible, corrosive, etiologic, radioactive, or otherwise restricted materials in excess of those levels allowed by the current edition of the International Fire Code shall be used or stored on the site.***
- 4. The home occupation shall be conducted in a manner which will not alter the normal residential character of the premises by exterior alteration of the property, expansion of parking, construction, creation of a separate entrance, the use of color, materials, lighting, signs (other than on the applicant's vehicle), exterior storage of materials, garbage, goods, or merchandise, or by the emission of sound, electric interference, vibration, dust, glare, heat, smoke odors or liquids.***
- 5. The home occupation shall not displace or impede the use of required parking spaces for the primary dwelling unit.***
- 6. A home occupation is deemed personal in nature and cannot be transferred with title to the property. Any change of owner or owners or location shall automatically void an existing home occupation license granted under this ordinance and shall necessitate application and issuance of a new license.***
- 7. A home occupation shall be subject to all other provisions of the City Zoning Ordinance and City Code as applicable.***

- 8. Home occupation shall meet and be in compliance with the C, C, & R's (Conditions, Covenants, and Restrictions) of the subdivision or where the business is located, if any.**

**Article 16, CB-2 General Business Zone**

Amend Article 16, CB-2 General Business Zone, Section 1601 Uses Permitted by **adding:** Medical Marijuana Dispensaries (no cultivation) as a permitted use subject to the following conditions and limitations:

- a. Applicant shall provide:
  - 1) The name(s) and location(s) of the offsite cultivation operation associated with the medical marijuana dispensary.
  - 2) A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c).
  - 3) A survey sealed by a registered land surveyor showing the location of the nearest medical marijuana dispensary or cultivation location if within 25 miles.
  - 4) Site plan, floor plan, building permits for occupancy change, and a security plan.
- b. Shall be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle.
- c. Shall be a maximum 2, 500 square feet. Storage space 500 square feet maximum.
- d. Shall not be located within **250** feet of a residentially zoned property. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the zoning boundary line of the residentially zoned property.
- e. Shall not be located within **500** feet of other dispensaries, abuse treatment facilities, group homes, alcohol rehabilitation facilities, correctional transitional facilities, a public or private elementary or secondary school, kindergarten or preschool or similar use, Place of Worship, Public Park or library. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.
- f. A medical marijuana dispensary lawfully operating is not rendered in violation of these provisions by the subsequent location of the uses listed in section e above.



- g. Shall have operating hours not earlier than 8 a.m. and not later than 10 p.m.
- h. Drive-through services are prohibited.
- i. On-site cultivation of medical marijuana is prohibited.
- j. Shall provide for proper disposal of marijuana remnants or by-products, and which are not to be placed within the facility's exterior refuse containers.
- k. The Medical Marijuana Dispensary facility shall comply with all the restrictions and requirements of the Arizona Medical Marijuana ACT, A.R.S. § 36-2801 through 2818, together with compliance with any regulations adopted by the Arizona Department of Health Services pursuant to same, and said regulations are incorporated herein by this reference as if set forth in full.

#### **Article 18, CI-2 Industrial Zone**

Amend Article 18, CI-2 Industrial Zone, Section 1801 Uses Permitted by **adding: Medical Marijuana Infusion (or Manufacturing) Facility** and, or **Medical Marijuana Cultivation** as a permitted use subject to the following conditions and limitations:

- a. Applicant shall provide:
  - 1) The name(s) and location(s) of the offsite medical marijuana dispensary associated with the cultivation operation and/or infusion facility.
  - 2) A copy of the operating procedures adopted in compliance with A.R.S. §36-2804(B)(1)(c) and
  - 3) A survey sealed by a registered land surveyor showing the location of the nearest medical marijuana dispensary or cultivation location if within 25 miles.
  - 4) Site plan, floor plan, building permits for occupancy change, and a security plan.
- b. Shall be located in a permanent building and may not locate in a trailer, cargo container, or motor vehicle.
- c. Shall be a maximum 3,000 square feet. Storage space 1,000 square feet maximum. Customer sales prohibited.
- d. Shall not be located within **250** feet of a residentially zoned property. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or

proposed to be conducted to the zoning boundary line of the residentially zoned property.

- e. Shall not be located within **500** feet of another Medical Marijuana infusion facility, another Medical Marijuana cultivation facility, a public or private elementary or secondary school, kindergarten or preschool or similar use, Place of Worship, Public Park or library. This distance shall be measured in a straight line from the exterior walls of the building or portion thereof in which the business is conducted or proposed to be conducted to the property line of the protected use.
- f. A medical marijuana cultivation facility and/or infusion lawfully operating is not rendered in violation of these provisions by the subsequent location of the uses listed in section e above.
- g. Shall provide for proper disposal of marijuana remnants or by-products, and not to be placed within the facility's exterior refuse containers.
- h. The Medical Marijuana Infusion and Cultivation facility shall comply with all the restrictions and requirements of the Arizona Medical Marijuana ACT, A.R.S. § 36-2801 through 2818, together with compliance with any regulations adopted by the Arizona Department of Health Services pursuant to same, and said regulations are incorporated herein by this reference as if set forth in full.

Location of any Medical Marijuana Dispensary, Medical Marijuana Infusion (or *Manufacturing*) Facility and, or Medical Marijuana Cultivation in remaining zoning districts not mentioned specifically in this ordinance is strictly prohibited.